

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

JT's FRAMES, INC., an Illinois corporation,	)	
individually and as the representative of a	)	
class of similarly-situated persons,	)	
	)	Case No. 08 C 1369
Plaintiff,	)	
v.	)	Judge Kapala
	)	Magistrate Judge Mahoney
AMERICA DIRECT, INC.	)	
	)	
Defendant.	)	

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**DEFENDANT, AMERICA DIRECT, INC.'S LOCAL RULE 56.1(a)(3)  
STATEMENT OF MATERIAL UNDISPUTED FACTS**

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Pursuant to Local Rule 56.1(a)(3), by its attorneys, Eric L. Samore, Molly A. Arranz and Darren P. Grady of SmithAmundsen LLC, Defendant, AMERICA DIRECT, INC. ("America Direct"), respectfully submits the following Rule 56.1(a)(3) Statement of Material Undisputed Facts in Support of its Federal Rule of Civil Procedure 56 Motion for Summary Judgment.

**Procedural Background.**

1. The Class Action Complaint is based upon Plaintiff's claim of a violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), as Plaintiff voluntarily dismissed the conversion and Illinois Consumer Fraud Act counts as pled. (Plaintiff's Class Action Complaint attached hereto as **Exhibit A.**) In the Class Action Complaint, plaintiff seeks relief on behalf of JT's Frames, Inc. ("JT's Frames" or "Plaintiff"), individually, and on behalf of a class of persons, in accordance with 735 ILCS 5/2-801. (*Id.*)

2. Defendant, America Direct, has filed an answer to the TCPA cause of action and has asserted affirmative defenses thereto. (Def.'s Answer and Affirmative Defenses attached

hereto as **Exhibit B.**)

3. Plaintiff, JT's Frames, is an Illinois corporation with its principal place of business in McHenry County, Illinois. (*See* Exh. A, ¶ 9.) Defendant, America Direct, is also an Illinois corporation, located in Algonquin, Illinois, with its principal place of business in McHenry County, Illinois. (*Id.*, ¶ 9; *see also* Mandy J. Schneider Aff., ¶ 2, attached hereto as **Exhibit C.**)

4. This matter was removed by America Direct from the Circuit Court of McHenry County, Illinois, on grounds that the United States District Court for the Northern District of Illinois has original jurisdiction, under the provisions of 28 U.S.C. § 1331, because a claim pursuant to the TCPA arises under federal law. *See Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449-51 (7<sup>th</sup> Cir. 2005).

5. Venue is proper in the Northern District of Illinois because the events giving rise to the Plaintiff's claims occurred in McHenry County, Illinois. (Exh. A, ¶ 7.)

**Background of The Case.**

6. This case arises out of Plaintiff's claim under the TCPA, which prohibits a person or entity within the United States from transmitting unsolicited fax advertisements. (*See* Exh. A, ¶ 2.)

7. Plaintiff vaguely avers that "[o]n or about November 2007, Defendant faxed an advertisement to Plaintiff." (*See* Exh. A, ¶ 11.) Plaintiff has attached to the Class Action Complaint, as Exhibit A, a "copy of the facsimile" at issue. (*See id.*)

8. In response, America Direct has denied any wrongdoing and has asserted affirmative defenses, including that: Plaintiff has failed to state a claim upon which relief may be granted against the defendant. (Exh. B at 9.) Defendant has sought sanctions under Federal Rule

of Civil Procedure 11. (*Id.* at 10.)

9. America Direct is a small company in Algonquin, Illinois. (Schneider Aff., ¶ 2.) For its business, America Direct sends fliers or advertisements by mail, only, on behalf of other companies that have requested its services. (*Id.*) The Defendant has never utilized any faxing service or its own facsimile machine or computer to transmit any of these advertisements or fliers by facsimile. (*Id.*)

10. In August 2007, America Direct became a member of two Chambers of Commerce in McHenry County: the Crystal Lake Chamber of Commerce and the Algonquin Lake Chamber of Commerce. (Schneider Aff., ¶ 3.) After becoming members of these two organizations, America Direct decided to take advantage of a service offered. (*Id.*) These Chambers of Commerce allowed their members the opportunity to insert fliers within the Chamber of Commerce newsletter sent in the mail to other members. (*Id.*) In November 2007, America Direct provided two inserts to these two Chambers of Commerce to be included in the monthly newsletter mailed to members on the organizations' mailing lists. (*Id.*)

11. "Exhibit A" to Plaintiff's Complaint was one of the inserts provided by America Direct to the Chambers of Commerce for inclusion in their newsletters to be sent in the mail to other Chamber of Commerce members. (Schneider Aff., ¶ 5.)

12. America Direct has never transmitted or authorized the transmission by facsimile of "Exhibit A" to Plaintiff or any other entity or person. (Schneider Aff., ¶ 6.)

13. The "Exhibit A," attached to the Complaint, which the Plaintiff claims was faxed from Defendant to Plaintiff has no indication on it that any facsimile transmission ever occurred. (*See* Exhibit A to Exh. A, hereto.) At the top of Exhibit A, there is no "header" to indicate a sender's (or recipient's) facsimile number, the time or date of transmission, or any other

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identification of a facsimile. (*See id.*) The contents of Exhibit A pertain to “America Direct—Your partner in direct mail...” (*Id.*) It addresses “businesses that are currently doing direct mail campaigns or those who are new to direct mail” and asks whether they are “receiving the best postage rate for [their] direct mail campaign.” (*Id.*)

14. America Direct’s telephone detail reports for the entire month of November 2007 show that no facsimile was sent from America Direct to JT’s Frames. (Schneider Aff., ¶ 7.)

Respectfully Submitted,

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